

REMARKS

The Examiner's office action mailed March 6, 2006, has been carefully considered. However, as explained below, all of the rejections are defective and not in keeping with the requirements for the patent statute.

Embodiments of the present invention make it possible to optimally program a programmable hearing aid using real time user feedback during the fitting process. Most of the fitting is carried out without any involvement of the dispenser. The user interacts with real-time stimuli to modify the targets.

A modified set of parameters is electrically forwarded to the hearing aid by a programmer. The modified parameter set alters the acoustic characteristics of a hearing aid and the user can then evaluate the results thereof, in view of the real-time audio which is presented.

Voroba et al. does not address programmable hearing aids. Voroba et al. describes a fitting system which is directed to an electro-mechanical component selection process and is not directed to programmable hearing aids.

As made clear in Weinfurtner et al. U.S. Patent 6,035,050 of record and part of the basis for rejection of the pending claims, a programmable hearing aid has a common electrical/electronic circuit, see FIG. 6 thereof, which receives electrical representations of characteristic setting parameters. The characteristics of programmable hearing aids are electrically altered by providing a revised set of parameters, usually using a programmer device to produce a prosthesis which has different acoustic properties but which has the same overall electrical circuitry.

The system and method of Voroba et al. are quite different and incompatible with programmable hearing aids. As described in Voroba et al.:

"The patient, by paired comparative selections, chooses the electronic components that will give the preferred saturation sound pressure ... the preferred gain of the hearing aid and the preferred frequency response slope of the sound." (Col. 3 Lines 27-32 Voroba et al.)

Further relative to the above process Voroba et al. state:

"After the test has been completed and test module is removed from the ear shell assembly, an amplification module is provided by the dispenser having the same electronic components that the patient selected during testing.

That amplification module is snapped into the ear shell assembly which the patient selected prior to the testing and the patient may leave the premises with the same hearing aid that the patient has chosen during the testing process".

(Col. 4 Lines 5-13 Voroba et al.)

Thus it is quite clear that Voroba et al. is describing and disclosing a process where the patient selects components which in combination provide the desired audio characteristics of the prosthesis. This as a result involves picking and choosing among various components. The dispenser then assembles the patient's selected components to produce the final product. This is not a programmable hearing aid. Nor is the process described by Voroba et al. one of fitting a programmable hearing aid.

Unlike the claimed systems and methods, Voroba et al. merely assists the patient in selecting components. Further in this regard Voroba et al. state:

"Component selection and switching, which is one or more of the important aspects of the invention, is discussed in more detail below in connection with the schematic diagrams of the circuits in the subject console as shown in FIGS. 11a-11d." (Col. 7 Lines 57-62 of Voroba et al.)

Voroba et al. describe the noted FIGS. as:

"FIG. 11, consisting of FIGS. 11a-11c are schematic drawings of circuits which are used to select electronic components which will be matched by the electronic components of the final hearing aid." (Col. 5 Lines 6-9 Voroba et al.)

Voroba et al. do not teach, disclose or make obvious the following limitations in the various independent claims:

"second software executable by the processor responsive to the user feedback to modify the parameters of the programmable hearing aid in accordance with that feedback; and additional software for downloading the

modified parameters to the programmable hearing aid thereby altering the performance thereof." (Claims 19, 20, 22, 23)

Independent claim 21 includes similar wording wherein it states:

"second software executable by the processor responsive to the user feedback to modify the parameters of the hearing aid in accordance with that feedback." (Pending claim 21)

In claims 24-29 at least the following limitations are completely absent from the structure and method from Voroba et al.:

"circuitry coupleable to a hearing aid that is programmable with parameters to specify the performance thereof ... additional software for downloading the modified at least one parameter to the hearing aid thereby altering their performance thereof." (Pending claims 24-29)

The following limitations from claims 30-33 are completely absent from Voroba et al.:

"circuitry for downloading parameters to and programming the hearing aid ... circuitry for receiving user feedback of the pre-stored sound stimuli and for modifying the current set of parameters forming an updated set of parameters that are down loaded to the hearing aid." (Pending claims 30-33)

The following limitations from claims 34-36, and 40 are completely absent from Voroba et al.:

"circuitry responsive to the user feedback to modify a current set of parameters of the hearing aid; and second software for downloading the modified parameters to the hearing aid thereby altering the characteristics thereof." (Pending claims 34-36, 40)

Finally the following limitations from pending claims 37, 38 and 39 are completely absent from Voroba et al.:

"processing the user feedback and altering the existing set of parameters of the hearing in response thereto; transferring the altered set of parameters to the hearing aid." (Pending claims 37, 38 and 39)

Applicant recognizes that the pending claims have been rejected as obvious or unpatentable over Voroba et al. in view of Weinfurtner et al. '050 (claims 19, 30, 31, 34, 37); Voroba et al. in view of Weinfurtner et al. '050 further in view of Weinfurtner '620 (claims 24, 25) Voroba et al. in view of Weinfurtner et al. '050 further in view Weinfurtner '620 (claims 20, 22, 23, 27-29, 31-33, 35, 36, and 38); Voroba et al. in view of Weinfurtner et al., '050 further in view of Sauer '285 (claim 21) and Voroba et al. in view of Weinfurtner et al. '050 further in view of Weinfurtner '620 (claim 26). However, the combination of Voroba et al. in view of Weinfurtner et al. '050 in addition to not teaching the claimed systems and methods, clearly is improper under the U.S. statute.

Weinfurtner et al. '050 and Weinfurtner '620 both are directed to programmable hearing aids however, neither is directed to a fitting system as claimed. Neither Weinfurtner et al. '050 nor Weinfurtner '620 suggest, disclose or make obvious the above quoted limitations of the pending claims. Hence, they do not make up for the deficiencies of Voroba et al. in that Voroba et al. also completely fails to suggest, disclose or make obvious any of the above quoted limitations from the pending claims.

Beyond the above noted deficiencies in the combinations of the outstanding Office Action, Voroba et al. is directed to a system and apparatus for electro-mechanically selecting components for hearing aid, which is not a programmable hearing aid so as a consequence, any attempt to modify Voroba et al. by Weinfurtner et al. '050 as argued by the Examiner as follows:

"to use the programmable processor of Weinfurtner in the hearing device of Veroba such that the 'patient may leave the premises with the same hearing aid that the patient has chosen during the testing process' and with the same assembled device without a waiting assembly of individual components thereby saving time in assembly costs" (Page 4 of Office Action, lines 7-11)

means that the fundamental mode of operation and process of Voroba et al. must be substantially changed. As it is made clear in the Manual for Patent Examination Procedure:

"If the proposed modification or combination of the prior art would change the principal of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious" (MPEP Rev. 3, August '05 pages 2100-2138).

Further on the same page, the MPEP noted that the CCPA, the predecessor to the Federal Circuit reversed a rejection holding that the

"suggested combination of references would require a substantial reconstruction and redesign of the elements shown in (the primary reference) as well as a change in the principal under which the (primary reference) construction was designed to operate." (MPEP Rev. 3 August, 05 page 2100-2138)

Thus for at least the above reasons the rejections of the pending claims do not comply with the requirements for establishing a proper *prima facie* case of obviousness. They should be withdrawn. The newly added claims are allowable for at least the same reasons.

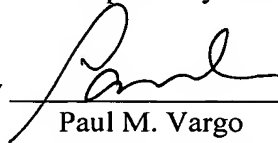
In addition to the above, the outstanding rejections clearly represent a form of hindsight reconstruction. Nothing about Voroba et al. Weinfurtner et al. or Weinfurtner suggests modifying Voroba et al. as proposed by the Examiner. The modification and suggestion clearly comes from the disclosure of the present application and the pending claims. This is clearly improper and further contributes to the conclusion that the pending claims are allowable over the prior art of record.

Allowance of the application is respectfully requested.

Respectfully submitted,

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